UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,245	06/12/2001	Katrina L. Dewar	2951.03US02	3786

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EXAMINER
WONG, LUT

ART UNIT	PAPER NUMBER
2129	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

> A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
> WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
>   after SIX (6) MONTHS from the mailing date of this communication.
> - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
> - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
>   Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
>   earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>06 June 2008</u>.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>15-17</u> is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) <u>15-17</u> is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a) ☐ All b) ☐ Some * c) ☐ None of:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. _____.
    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
       application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This office action is responsive to an RCE AMENDMENT entered Jun 06, 2008 for the patent application 09/878245.

Status of Claims

Claims 15-17 are independent and pending. Claims 15-17 have been amended.

Response to Arguments

Applicant's arguments with respect to claims 15-17 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites "An electronic prediction system…comprising:…an employer job advertisement". It is not clear how an advertisement being part of a system. While a system typically comprises software or hardware components, it is atypical/unusual that a system comprises an advertisement. An advertisement does not seem to be tangible. For example, an oral advertisement would be

intangible. Perhaps the applicant can explain how does the ad tide to the

system. In other words, how does something intangible being part of the system.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated

by Ed Rubinstein ("Operators embrace automated systems to hire the best,

reduce turnover" 1997). Examiner Notes (EN) and related citations are

denoted in parenthesis.

Claim 15: Rubinstein anticipates an electronic prediction system for

assessing a suitability of job applicants for an employer (See e.g. abstract where

it states "PC-based systems and telephones have begun permeating the foodservice hiring

process related to *pre-employment recruitment and screening*"), the electronic prediction

system comprising:

a plurality of terminals connected to the Internet and accessible by the

applicants (See e.g. abstract where it states "DPDApplicant, developed by Decision

Point Data Inc., comprises proprietary software and a portable computer, display and telephone

unit called a *Screen Phone*.");

an applicant screening server connected through the Internet to the terminals, the applicant screening server having a testing computer program and storing test data (See e.g. pg. 3 where it states "Once an application is complete the DPD Screen Phone transmits responses to Decision Point Data's *host system*,");

a website identified by a uniform resource locator indicated in an employer job advertisement (See e.g. pg. 4 where it states "As the Internet gains even greater acceptance, foodservice operators will utilize the *World Wide Web* to prescreen applicants"); the website configured to present application questions to the applicants at the terminals and to receive applicant responses entered at the terminals in response to presentation of the application questions (See e.g. pg. 3 where it states "A DPDApplicant interview begins with the job applicant *using the Screen Phone* to provide biographical information and an employment history"), the application questions comprising (*EN: ¶1 applies*):

requirements questions eliciting information on whether the applicants meet employment requirements (*EN: ¶1 applies*. See e.g. pgs. 1-2 where it states "In a first set of *interview questions*, a potential jab applicant responds to closed-end questions those requiring yes-or-no answers - that commonly are found on traditional paper-based employment applications, such *as the applicant's ability to work nights and weekends*"); and

set of validated questions validated by statistically correlating job performance ratings of a plurality of hired workers with previous responses given by the workers to the application questions before the workers were hired, the set of validated questions being a short subset of a larger in-depth

assessment, the short subset being selected to present a job-related pre-screen that can be presented at the terminals faster than presenting all questions in the larger in-depth assessment (*EN: ¶1 applies*. See e.g. pg. 2 where it states "A job candidate who completes successfully the first tier of the interview is then asked *a second set of questions*, which analyze his or her attitudes toward punctuality, teamwork, orientation and ability to manage stress.". See also pg. 3 "Decision Point Data is in the process of adding a full fledged screening function to DPDApplicant. It is working with Batrus Hollweg, a Dallas-based consultant that helps foodservice operators *select top-caliber employees*, to integrate a psychological test into DPDApplicant. The personality test will *measure, among other factors, customer-service orientation, propensity to follow rules and teamwork*");

a scoring system for automatically scoring the applicant responses in real time, the scoring system comparing applicant responses for requirements questions to employer requirements and being validated to predict both performance and turnover potential (See e.g. pg. 2 where it states "The second procedure is that responses from the automated prescreening sessions are sent directly to the area or district manager by fax. The manager then conducts a follow-up interview, either in person or over the telephone. An important aspect of HReesy here is its use of *artificial intelligence* to highlight key areas on which the area or district manager should focus with each candidate." See also pg. 3 "On a monthly basis, DPDApplicant generates an employee "Profiler," which over time allows organizations to benchmark the success of its hiring practices by *measuring average employee-retention patterns and turnover rates*,");

a scoring database connected to the applicant screening server (See e.g. pg. 3 where it states "Once an application is complete the DPD Screen Phone transmits responses to Decision Point Data's host system, which consists of a Compaq Pro Atliant

computer with RAID Level Five running Wjndows NT and an SQL Server for *database applications*");

an applicant input system located on the employer's premises (*EN: ¶ 2 applies*) and configured to administer an in-depth assessment to an applicant at the employer's premises after the applicant has come to the employer's premises and logged on (*EN: ¶ 2 applies*. See e.g. pg. 4 where it states "The second procedure is that responses from the automated prescreening sessions are sent directly to the area or district manager by fax. The manager then conducts a *follow-up interview, either in person or over the telephone*." See also pg. 3 "Retailers also have adopted DPDApplicant. JumboSports, the Tampa, Fla.-based sporting-goods chain, is rolling out the system and by early August will have *installed two DPD Screen Phones in each of its 85 units*."); and

a viewing system for permitting the employer to view applicant results from the electronic prediction system and the applicant's rank order (See e.g. pg. 3 where it states "On a monthly basis, DPDApplicant generates *an employee "Profiler*," which over time allows organizations to benchmark the success of its hiring practices by *measuring average employee-retention patterns and turnover rates*,"), the applicant results providing information on applicants who have a high probability of performing successfully and not terminating early (*EN: ¶ 3 applies*. See e.g. pg. 3 where it states "On a monthly basis, DPDApplicant generates *an employee "Profiler*," which over time allows organizations to benchmark the success of its hiring practices by *measuring average employee-retention patterns and turnover rates*,").

Claim 16: Claim 16 is drawn to claim 15. See the rejection above. Regarding "an employer job advertisement identifying a uniform resource locator"

(See e.g. pg. 4 where it states "As the Internet gains even greater acceptance, foodservice operators will utilize the *World Wide Web* to prescreen applicants". *EN: In order to utilize the www for prescreening, the url must be "advertised" somewhere somehow. As such, it is also inherent*).

Claim 17: Claim 17 is boarder version of claim 15. See the rejection above. Regarding "a resource identified in an employer job advertisement" (See e.g. pg. 4 where it states "As the Internet gains even greater acceptance, foodservice operators will utilize the *World Wide Web* to prescreen applicants". *EN: In order to utilize the www for prescreening, the website (i.e. the "resource") must be "advertised" somewhere somehow. As such, it is also inherent*).

Examiner Note

¶ 1: immaterial. What kind of questions does not affect the structures or functions of the system. In other words, these questions are considered as non functional descriptive materials.

¶ 2: immaterial. Whether the input system is located on the employer's premises does not affect the structures or functions of the system.

¶ 3: immaterial. It is merely an intended uses of the result and does not affect the structures or functions of the system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lut Wong whose telephone number is (571) 270-1123. The examiner can normally be reached on M-F 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent David can be reached on (571) 272-3080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Lut Wong/
Patent Examiner, AU 2129

/David R Vincent/

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